

KYRGYZSTAN

LAW OF THE KYRGYZ REPUBLIC ON THE LEGAL PROTECTION OF SELECTION ACHIEVEMENTS*

(Laws of the Kyrgyz Republic, February 27, 2003, No. 46,
March 31, 2005, No. 58, August 8, 2006, No. 155)

Section I.	General provisions	The effects of this Law shall extend to all botanical and zoological genera and species contained in the list approved by the Government of the Kyrgyz Republic.
Section II.	Conditions for protecting a selection achievement and the procedure for applying for the grant of a patent	(KR Law of March 31, 2005, No. 58)
Section III.	Examination of a selection achievement	Section I General provisions
Section IV.	The registration of a selection achievement and the grant of a patent	Article 1 Basic concepts
Section V.	Authorship rights in a selection achievement	The following concepts are used for the purposes of this Law:
Section VI.	Rights and obligations of the patent holder	Author of a selection achievement (the breeder) – the person whose creative endeavour resulted in the selection achievement;
Section VII.	Protecting the rights of the patent holder	breed – a group of animals which, irrespective of whether it can be protected, possesses genetically determined biological and morphological characteristics and features, some of which are specific to the group and distinguish it from other groups of animals. The breed may consist of male or female individuals or breeding material. The categories of the breed which are protected are: the type, the stud line, the cross line and the family;
Section VIII.	Recognizing a patent as void, early termination of the validity of a patent, renewal of the validity of a patent	
Section IX.	Licences	
Section X.	International cooperation	breed animal – an animal intended for the reproduction of a breed;
Section XI.	Final provisions	breeding material – a breed animal and its gametes or zygotes (embryos);
	This Law regulates the proprietary and personal non-proprietary relationships arising in connection with the breeding or identification (hereinafter “creation”), use and legal protection of selection achievements for which patents are granted by the Kyrgyz Republic.	selection achievement – a plant variety or breed of animal; protected selection achievement – a plant variety or animal breed which is entered in the National Register of Protected Selection Achievements;

* Translation provided by the Office of the Union.

variety – a group of plants within the same botanical taxon which is the lowest of the known classes and which, regardless of whether it fully meets the conditions for protection, can be defined by the characteristics of its genotype or combination of genotypes, is distinguished by at least one of its characteristics from other groups of plants in the same botanical taxon, and can be regarded as uniquely suitable for obtaining unaltered whole plants of the variety.

The protected categories of a variety are: the clone, the line, the first generation hybrid and the population;

seeds – the generative and vegetative organs of plants which are used to reproduce the variety;

plant material – wholeplants or parts of plants, seeds, seedlings, bulbs or fruit of different cultures which are intended for propagation or sale for purposes other than the reproduction of the variety;

a counterfeit selection achievement – a selection achievement, the propagation and/or commercial use of which involves an infringement of the exclusive rights of the patent holder.

(KR Law of March 31, 2005 No. 58)

Article 2

Legal protection of a selection achievement

The right to a selection achievement shall be protected by this Law and confirmed by a patent for the selection achievement.

The patent shall certify the authorship of the breeder, the priority of the selection achievement and the exclusive right of the patent holder to use the selection achievement.

The scope of the legal protection which the patent confers on the selection achievement shall be determined by the combination of essential characteristics set down in the description of the selection achievement.

Article 3

State regulation concerning the legal protection of selection achievements

Under this Law the authorized State authority of the Kyrgyz Republic for intellectual property shall implement State policy on the legal protection of selection achievements, consider patent applications for selection achievements, publish them, make a preliminary examination of selection achievements, decide whether to grant or refuse a patent according to the findings of the examination as to novelty, distinctiveness, uniformity and stability, register selection achievements on behalf of the State in the National Register of Protected Selection Achievements of the Kyrgyz Republic (hereinafter – the National Register of Protected Selection Achievements), publish official notices on the protection of selection achievements, grant patents for selection achievements, monitor their maintenance in force and perform other functions in accordance with the Regulations on the authorized State Agency for Intellectual Property, which have been approved by the Government of the Kyrgyz Republic.

See: Regulations on the State Agency for Science and Intellectual Property attached to the Government of the Kyrgyz Republic (Kyrgyzpatent) (approved by a Decision of the Government of the KR of March 15, 2001, No. 100).

For the purpose of dealing with disputes arising in connection with selection achievements, an Appeals Board is established in the authorized State Agency for Intellectual Property. The Regulations on the Appeals Board are adopted by the authorized State Authority for intellectual property.

See: Regulations on the Appeals Board in the State Agency for Intellectual Property of the Government of the Kyrgyz Republic (approved by a Decision of the Board of the State Agency for Intellectual Property of the Government of the Kyrgyz Republic (Kyrgyzpatent) of December 30, 1998, No. 7).

The central State authority for the management of agricultural and water resources shall be responsible for drawing up the List of botanical and zoological genera and species (hereinafter the List), which is approved by the Government of the Kyrgyz Republic.

See: Decision of the Government of the KR of 28 August 1998, No. 572 on the Approval of Lists of Botanical and Zoological Genera and Species of Plants and Animals”

The central State authority for the management of agricultural and water resources shall make proposals to the Government of the Kyrgyz Republic on supplementing the List with new genera and species and on altering the names of genera and species entered in the List. The State Commission on the Testing of Agricultural Plant Varieties, attached to the central State authority for the management of agricultural and water resources (hereinafter Goskomissiya) and the State Inspectorate for Animal Breeding and Pasture Control attached to the central State authority for the management of agricultural and water resources (hereinafter Gospleminspektsiya) are State agencies performing the following functions: testing selection achievements on behalf of the State, by agreement with the authorized State Agency for Intellectual Property, for distinctiveness, uniformity and stability; managing the National Register of Regionally Distributed Varieties within the Kyrgyz Republic and the State book of animal breeds of the Kyrgyz Republic; making decisions to permit the use of a selection achievement in production; and other functions according to the relevant regulations approved by the central State authority on the management of agricultural and water resources. (Laws of the KR of February 27, 2003, No. 46, March 31, 2005, No. 58).

Section II

Conditions for protecting a selection achievement and the procedure for applying for the grant of a patent

Article 4

Conditions for the protection of a selection achievement

A patent shall be granted for a selection achievement which meets the criteria for protection and which relates to botanical and zoological genera and species.

The criteria for protecting a selection achievement shall be:

(1) novelty. The selection achievement shall be considered to be new if on the date when the application for the patent is filed its seeds or breeding material have not been sold or transferred in any other way to other persons for their use by the breeder or by his legal successor, or with their consent:

on the territory of the Kyrgyz Republic – earlier than one year before that date;

on the territory of another State – earlier than four years or, for vines, ornamental timbers or cultivated fruits, earlier than six years before the date in question.

The novelty of the selection achievement shall not be affected if the disposal of any material of the variety or breed by other persons took place before the expiry of the time limits specified in this paragraph:

for the purpose of intentionally causing harm to the applicant;

in the performance of a contract to transfer rights to obtain a patent;

in the performance of a contract whereby a third party makes additional deliveries of material for the propagation of a variety or breed, with the consent of the applicant, on condition that such deliveries take place under the supervision of the applicant;

in the performance of a contract whereby a third party carries out sex testing or laboratory investigations or controlled tests to appraise a variety or breed;

(2) distinctiveness. The selection achievement shall be considered distinctive if it is clearly distinguished from any other generally known selection achievement in existence at the time the application is filed.

The fact of being generally known may be ascertained, in relation to the selection achievement:

- where the invention has become part of common knowledge as a result of its being produced, reproduced or brought to the cultivation stage for propagation or conservation for the above purposes;
- where it has been offered for sale or has been sold, exported or imported;
- where it has been entered in official catalogues or works of reference or is clearly described in any publication or is included in the National Register of Protected Selection Achievements;

(3) 3) uniformity. The selection achievement shall be considered uniform if on the basis of the particular characteristics of its propagation, plants and animals are sufficiently uniform in their characteristics;

(4) stability. The selection achievement shall be considered stable, if its fundamental characteristics remain unaltered after repeated propagation or, in the case of a special propagation cycle, at the end of each such cycle.

(KR Law of March 31, 2005, No. 58)

Article 5
Persons entitled to apply for the grant
of a patent

The right to apply for the grant of a patent (hereinafter the "application") shall be with the breeder, the employer or their legal successor (hereinafter the "applicant").

If the selection achievement were created by several persons acting together, they shall have the right to make a joint application.

The application may be filed through a proxy handling matters relating to the grant of a patent on the basis of a power of attorney.

Natural or legal persons of other States having no permanent residence or place of business in the Kyrgyz Republic shall deal with the grant of a patent and its maintenance in force through patent attorneys in the Kyrgyz Republic who are registered

with the authorized State Agency for Intellectual Property, unless otherwise stipulated in an international agreement of the Kyrgyz Republic.

Employees of the authorized State Agency for Intellectual Property or of Goskomissiya or Gospleminspektsiya shall not have the right, during the entire period of their employment in those institutions, to file an application for the grant of a selection achievement patent.

Article 6
A selection achievement created
in the course of employment

If a selection achievement were created while performing professional duties or obligations, the right to apply for the grant of a patent shall lie with the employer, unless otherwise agreed between the breeder and the employer.

A selection achievement shall be deemed to have been created in the course of employment if, at the time of the creation, the breeder was performing duties:

essential to the task he was performing;

specifically imposed on him for the purpose of creating the selection achievement.

If the employer, within four months of the date on which he was notified by his breeder of the creation of the selection achievement, fails to file an application with the authorized State Agency for Intellectual Property or to cede the right to do so to another person, the breeder shall have the right to file an application and to obtain a patent in his own name. In that case the employer shall have the right to use the selection achievement by paying an agreed sum of compensation to the author or patent holder.

If a selection achievement were created by an employee using the experience, equipment, and technical and other resources belonging to the employer, but not while performing his professional duties or carrying out a specific task imposed by the employer, the right to obtain a patent shall lie with the employee. In that case the employer shall

be entitled to priority use of the selection achievement by paying an agreed sum in compensation to the holder of the patent.

Other relationships arising in connection with the creation by an employee of a selection achievement shall be governed by the law of the Kyrgyz Republic.

Article 6-1

A selection achievement created in the course of works performed under a Government contract

If a selection achievement is created while working under a Government contract intended to serve the needs of the Kyrgyz Republic, the right to apply for and receive the grant of a patent for the selection achievement shall lie exclusively with the person carrying out the work (the contractor), unless it is established by the Government contract that the right belongs to the Kyrgyz Republic, on whose behalf the Government contractor is acting.

If according to a Government contract the right to the grant of a patent belongs to the Kyrgyz Republic, the Government contractor may file an application for the grant of a patent within six months of being informed in writing by the person performing the work (the contractor) that a selection achievement has been made which meets the criteria for protection. If within this period the Government contractor does not file an application, the right to the grant of a patent shall lie with the person performing the work (the contractor).

If a patent for a selection achievement created during the performance of work under a Government contract in the service of the Kyrgyz Republic is not obtained by the Government contractor in accordance with the first paragraph of this Article, the holder of the patent shall be bound, when so required by the Government contractor, to grant to such a person or persons as he may name a non-exclusive licence to use the selection achievement concerned for the purposes of works to be done or deliveries of products to be made for the needs of the Kyrgyz Republic.

An author of a selection achievement who is not a patent holder shall be paid a fee by the person who received the patent in accordance with the first

paragraph of this Article. For the payment of the fee, the provisions of Article 22 of this Law shall apply.

(KR Law of August 8, 2006, No. 155)

Article 7

Applying for the grant of a patent

An application for the grant of patent shall be filed with the authorized State Agency for Intellectual Property. The application shall contain:

- (1) a supporting statement;
- (2) a description of the variety or breed:

for plant varieties – a label designating the variety;

for animal breeds – a description of the breed in conformity with the method currently in use for the approbation of farm animals;

- (3) a document confirming that the fixed fee for the filing of the application has been paid or that a waiver of the payment has been granted, or setting out reasons for reducing the amount of the fee.

The requirements for making the application and for the documents to be attached to it are laid down in the Rules on the Compilation, Filing and Consideration of an Application for a Selection Achievement (hereinafter – the Rules), prepared and approved by the authorized State Agency for Intellectual Property.

See: Rules on the Compilation, Filing and Consideration of an Application for the Grant of a Patent for a Selection Achievement (approved by a Decision of the Board of the State Agency for Intellectual Property within the Government of the Kyrgyz Republic (Kyrgyzpatent) of October 30, 1998, No. 6);

Procedure for prosecuting applications for the grant of a patent for a selection achievement (approved by a decision of the KR Kyrgyzpatent of November 7, 2001, No. 8)

The application shall relate to a single selection achievement.

The applicant shall be responsible for the accuracy of the information provided in the application file. The application documents shall be filed in the national or official language. If the documents are filed in another language, a translation in the national or official language shall be attached to the application.

The date on which the application is filed shall be deemed to be the date on which the documents referred to in the first paragraph of this Article are received by the authorized State Agency for Intellectual Property.

The applicant may withdraw the application at any time up to the date on which a decision is received on the grant of the patent.

(KR Laws of March 31, 2005, No. 58, August 8, 2006, No. 155)

Article 8

Name of the selection achievement

The selection achievement shall have a name indicating the genus to which it belongs.

The name of the selection achievement shall make it possible to identify the selection achievement. It shall be brief and distinguishable from the names of existing selection achievements of the same or similar botanical or zoological genus. It shall not consist solely of figures and shall not cause confusion as to the properties, origin or significance of the selection achievement or the identity of the breeder, or run counter to the principles of public morality.

Any person who makes use of the selection achievement shall use the name under which it was entered in the National Register of Protected Selection Achievements.

If the name of the selection achievement does not meet the requirements of this Article, the applicant shall alter it within the time limit set in the Rules. An appropriate fee shall be payable for a change of name of the selection achievement made at the applicant's initiative.

The variety or breed shall be presented in other countries under the name by which it was registered in the National Register of Protected Selection

Achievements. The competent authority of the other country shall register the name supplied for the selection achievement, unless it considers the name to be inadmissible on its territory. In such a case it may require the breeder to submit another name.

Any person who offers the selection achievement protected on that territory for sale, or arranges for its sale in other countries, shall use the name of that selection achievement even after expiry of the period of validity of the patent or of the breeder's right in the achievement, unless such use is prevented, in accordance with the seventh paragraph of this Article, by rights acquired earlier.

Third party rights acquired earlier are unaffected. If by virtue of a prior acquired right the use of any particular name of a variety or breed is prohibited to a person who is bound by the sixth paragraph of this Article to use it, the breeder shall, at the request of the authorized State Agency for Intellectual Property, submit another name for that variety or breed.

(KR Law of March 31, 2005, No. 58)

Article 9

Priority right of a selection achievement

The priority of a selection achievement shall be established on the date when the application for the grant of a patent is filed with the authorized State Agency for Intellectual Property.

If two (or more) applications for the same selection achievement are received by the authorized State Agency for Intellectual Property on the same day, priority shall be established for the application dispatched on the earlier date. If it is found on examination that the applications have the same date of dispatch, the patent may be granted for the application with the earlier number assigned on registration by the authorized State Agency for Intellectual Property.

The priority of a selection achievement may be established by the date of filing of the first application in a foreign country with which the Kyrgyz Republic is linked through a bilateral or multilateral international agreement on the protection of plant

varieties and animal breeds, provided the application reaches the authorized State Agency for Intellectual Property within twelve months of that date.

An applicant wishing to use a priority right based on the first filing shall make a statement to that effect when filing the application with the authorized State Agency for Intellectual Property. Copies of the original application documents, verified by the authority which received them, together with samples or other evidence that the selection achievement which is the subject of both applications is the same, shall be submitted within three months.

The breeder shall have the opportunity, within two years of expiry of the priority or, where the first application has been declined or withdrawn, and sufficient time (following such refusal or withdrawal) to submit to the authorized State Agency for Intellectual Property any necessary information, documents or materials which are required for the purposes of an examination.

Section III Examination of a selection achievement

Article 10 Examination of an application for a selection achievement

The examination of a patent application for a selection achievement shall include a preliminary examination and test of the claimed selection achievement for distinctiveness, uniformity and stability.

(KR Law of March 31, 2005, No. 58)

Article 11 Preliminary examination of an application for a selection achievement

The preliminary examination of an application for a selection achievement shall be carried out within two months of its being filed with the authorized State Agency for Intellectual Property. During the preliminary examination the authorized State Agency for Intellectual Property shall verify that the documents specified in Article 7 of this Law are present and that the name of the selection

achievement meets the requirements of Article 8 of this Law, and ascertains the priority of the selection achievement.

A fee shall be payable for the preliminary examination.

From the date of filing and until being notified that the application has been accepted for consideration by the authorized State Agency for Intellectual Property, the applicant may, on his or her own initiative and on payment of a fee, supplement, correct or clarify the application documents, without altering the substance of the claimed selection achievement for which the grant of a patent is sought.

If the application were filed in breach of the requirements for the formulation and compilation of applications, or if additional materials are required for the purposes of an examination, the applicant shall be sent a request to supply the corrected or missing materials within two months of receiving the request.

If it is found during the preliminary examination that the name of a selection achievement does not meet the established requirements, the applicant shall be notified and invited to provide another name within two months of receipt of the notice.

At the request of the applicant, where proper grounds exist and subject to payment of the appropriate fee, the authorized State Agency for Intellectual Property may permit an extension of up to six months of the time limit for replying to the enquiry or notification referred to in the fourth or fifth paragraphs of this Article.

If the applicant fails to supply the requested materials within the specified time limit, or to alter the name of the selection achievement, or to submit a request for an extension of the fixed time limit, the application shall be deemed to have been withdrawn.

If the result of the preliminary examination is positive, the applicant shall be notified that his application has been accepted for consideration.

(KR law of March 31, 2005, No. 58)

Article 12

Publication of an application for a selection achievement patent

Within four months of the date of completion of the preliminary examination of the application for a selection achievement patent, the authorized State Agency for Intellectual Property shall publish a notice concerning the application in the Official Gazette. The information to be published shall be determined by the authorized State Agency for Intellectual Property. When the information about the application has been made public, any person may have access to the file on it. An appropriate fee shall be payable for access to the file.

Information about the application shall not be published if, before the end of the time limit for its publication, a decision has been made to grant a patent or the application has been withdrawn, or if a decision has been made to refuse the grant of a patent and the possibilities for appealing that decision have been exhausted.

The author of the selection achievement may, if he is not the patent holder, decline to be named as the inventor in the notice published about the application.

Within six months of the date of publication of the application, a claim for novelty presented by any person to the authorized State Agency for Intellectual Property shall be taken into consideration.

The claim shall be submitted by the interested person to the Appeals Board in the form of an objection.

The Appeals Board shall notify the applicant of the receipt of the objection and of its content. If the applicant does not agree with the objection by the interested person, he or she may send reasoned arguments against it to the Appeals Board within one month of being notified.

The objection shall be considered by the Appeals Board within four months of being received. A fee shall be payable for the filing and consideration of an objection sent to the Appeals Board.

The person who submitted the objection and the applicant may both be present when it is considered. If the selection achievement does not meet the requirement of novelty, a decision shall be made to refuse the grant of a patent.

Any of the parties may, in the event of disagreement with a decision of the Appeals Board, lodge a complaint with a court within six months of the decision.

(KR Law of March 31, 2005, No. 58)

Article 13

Temporary legal protection of a selection achievement

An applicant shall be afforded temporary legal protection for a selection achievement for the period from the date on which the application is published until the date when the patent is issued.

Having obtained the patent, the patent holder shall be entitled to compensation from any person having performed without permission, during the period of temporary legal protection of the selection achievement, the acts designated in the first paragraph of Article 24 of this Law.

(KR Law of March 31, 2005, No. 58)

Article 14

Testing a selection achievement for distinctiveness, uniformity and stability

Tests of a selection achievement for distinctiveness, uniformity and stability shall be carried out by Goskomissiya, Gospleminspektsiya or other competent bodies with which the Kyrgyz Republic has bilateral or multilateral agreements on the protection of plant varieties or animal breeds.

A fee shall be payable for tests of varieties.

In appraising a selection achievement for distinctiveness, uniformity and stability, Goskomissiya and Gospleminspektsiya may rely on:

the results of tests carried out under agreements with legal and natural persons in the Kyrgyz Republic

or with competent bodies in foreign countries on the testing of selection achievements with which the Kyrgyz Republic has bilateral or multilateral agreements on the protection of plant varieties or animal breeds;

tests carried out by an applicant or on his behalf in or outside the Kyrgyz Republic.

Goskomissiya or Gospleminspektsiya may require the applicant to supply any necessary information, documents or planting or breeding material, and may propose that the applicant carries out certain tests of the variety or breed.

According to the results of the tests on a selection achievement, Goskomissiya and Gospleminspektsiya shall decide whether the selection achievement meets the conditions for protection, and shall prepare an official description of it.

During the process of technical development and during the validity of the patent, Goskomissiya and Gospleminspektsiya may at any time add to the description.

The authorized State Agency for Intellectual Property, on the basis of the results of the tests for distinctiveness, uniformity and stability, and in the light of the reports and conclusions of Goskomissiya and Gospleminspektsiya, shall decide whether to grant a patent and shall establish its priority, if this has not been done during the preliminary examination, or decide to refuse the grant of a patent.

The applicant may have access to the files used during the examination and may observe the progress of the tests.

The applicant may, within two months of the date of receiving a decision to refuse the grant of a patent, request copies of the materials opposed to the application, and full information concerning the results of the tests performed.

(KR Law of March 31, 2005, No. 58)

Article 15

Challenging a decision to refuse the grant of a patent, and extension of missed time limits

If the applicant does not agree with a decision to refuse the grant of a patent, he or she may, within three months of the date of receiving the decision on the application or the copies he has requested of the materials opposed to the application together with full information on the results of the tests, submit to the Appeals Board an objection to the decision to refuse the grant of a patent.

The objection shall be considered within four months of the date when it reaches the Appeals Board. In the case of complex applications the time limit may be extended by agreement with the applicant. The applicant may be present, either in person or through his or her representative, when the objection is considered.

An appropriate fee shall be payable for submitting an objection to the Appeals Board.

The decision of the Appeals Board may be appealed by the applicant through the courts within six months of its adoption.

Where the time limits specified in the fourth and fifth paragraphs of Article 11 have been missed by the applicant, they may be extended by the authorized State Agency for Intellectual Property where proper grounds exist and subject to the payment of a fee.

A request for the extension of a missed time limit may be submitted by the applicant within six months of its expiry.

(KR Law of March 31, 2005, No. 58)

Section IV

The registration of a selection achievement and the grant of a patent

Article 16

Registration of a selection achievement and grant of a patent

Within two months of a decision on the grant of a patent and the payment of the appropriate fee, the selection achievement shall be registered by the

authorized State Agency for Intellectual Property in the National Register of Protected Selection Achievements.

The fee shall be paid within two months of the date on which the applicant receives the decision on the examination to register the selection achievement, or, if an additional fee is paid, within three months of the date on which this two-month time limit expires.

The procedure for entering and listing information recorded in the National Register of Protected Selection Achievements shall be laid down by the authorized State Agency for Intellectual Property.

See: Annex 8 "Procedure for the conduct of the National Register of Selection Achievements of the Kyrgyz Republic" to the Regulations on National Registers of Intellectual Property Subject Matter in the Kyrgyz Republic (approved by Decree No. 194 of the KR Kyrgyzpatent, May 13, 2004).

A patent for a selection achievement shall be granted to the applicant. If several applicants are named in the application for grant of a patent, the patent shall be granted to the applicant first named in the application, and shall be used by the applicants jointly by agreement among them.

A patent for a selection achievement shall be granted in the name of the Kyrgyz Republic and shall be signed by the chief officer of the authorized State Agency for Intellectual Property.

The format of the patent and the composition of the information contained therein shall be decided by the authorized State Agency for Intellectual Property.

An author of a selection achievement who is not a patent holder shall be issued with a certificate of authorship by the State Agency for Intellectual Property, in accordance with Article 21 of this Law. Corrections of obvious and technical errors shall be made to a patent already granted at the request of the patent holder.

If the patent is lost or damaged the patent holder shall be issued with a duplicate on payment of the appropriate fee.

Article 17 Term of validity of a patent

The term of validity of a patent for a plant variety shall be 20 years from the date of entry of the claimed selection achievement in the State Register of Protected Selection Achievements. For vines, ornamental timbers, cultivated fruits and forestry species, including their sub-species, and for animal breeds, the term of validity of the patent shall be 25 years.

(KR Law of March 31, 2005, No. 58)

Article 18 Maintaining a patent in force

The holder of a patent shall pay an annual fee to maintain the patent in force. The annual fee shall become payable in the first calendar year following the year in which the patent was granted.

Article 19 Publication of the notice concerning a patent

Within two months of the date of entry in the State Register of Protected Selection Achievements, the authorized State Agency for Intellectual Property shall publish a notice of the grant of a patent in the Official Gazette. The authorized State Agency for Intellectual Property shall decide what information is published.

(KR Law of March 31, 2005, No. 58)

Article 20 Patent fees

Fees shall be payable for filing an application for a selection achievement patent, for the examination and grant of a patent for a selection achievement, for maintaining it in force, and for other legally significant acts.

The list of acts for which fees are payable, the amount of the fees and the time limits for payment as well as the grounds for exemption from payment, reduction of the fees or reimbursement of fees, are laid down by the Government of the Kyrgyz Republic.

See: Decision No. 259 of the Government of the Kyrgyz Republic of May 14, 1999 on Approval of the Regulations concerning Fees for the Patenting of Selection Achievements.

Fees shall be payable to the authorized State Agency for Intellectual Property by the applicant, the patent holder or, by agreement with them, by any natural or legal persons.

All funds received in the account of the authorized State Agency for Intellectual Property by way of fees, including currency amounts and payments for services and materials, shall be used by the authorized State Agency for Intellectual Property to defray expenses incurred in carrying out the acts prescribed in the first paragraph of this Article, and also for technical equipment and to devise and develop an automated system, compile a bank of patent information and train staff.

(KR Law of March 31, 2005, No. 58)

Section V

Authorship rights in a selection achievement

Article 21

The author of a selection achievement

The natural person by whose creative endeavour a selection achievement was made shall be recognized as its author. If several individuals took part in the making of the achievement, they shall all be considered co-authors. The procedure for using the rights belonging to co-authors shall be decided by agreement among them.

Persons who made no individual contribution to the creation of a variety or breed and who merely provided the author or authors with technical, organizational or material assistance, or merely enabled the rights in the selection achievement to be formulated, shall not be recognized as co-authors.

Arrogation of the authorship of a breeder and coercion of another person into co-authorship shall be offences under the law of the Kyrgyz Republic.

The author of a selection achievement shall have the right of authorship, which shall be his inalienable non-proprietary right in law and shall be protected without limit of time. Authorship disputes shall be resolved through the courts.

Disputes arising between a patent holder who is not the author of a selection achievement and an author who is not the holder of the patent shall be resolved through the courts.

A certificate of authorship shall be issued to each author by the authorized State Agency for Intellectual Property. The certificate of authorship shall confirm authorship and the right of the author to remuneration from the holder of a patent for the use of a selection achievement.

In the event of the authorship certificate being lost or damaged, the author shall be issued with a duplicate on payment of the appropriate fee.

The format of the certificate of authorship and the information to be shown on it shall be decided by the authorized State Agency for Intellectual Property.

Article 22

Remuneration of an author of a selection achievement who is not the patent holder

An author of a selection achievement who is not the holder of the patent shall be entitled to receive remuneration from the patent holder during the term of validity of the patent for the use of the selection achievement. The amount of the remuneration and the conditions for its payment shall be determined by agreement between the patent holder and the author.

If a variety or breed has been created by several authors, the remuneration shall be apportioned by agreement between them.

If no agreement is reached between the parties on the amount of the remuneration and the arrangements for its payment, the dispute shall be dealt with by the courts.

<p style="text-align: center;">Section VI Rights and obligations of a patent holder</p>	<p>relation to goods produced from a plant material of a protected variety.</p>
<p style="text-align: center;">Article 23 The holder of a patent</p>	<p>The permission of a patent holder is necessary for acts referred to in the second paragraph of this Article performed with seeds or breeding material which:</p>
<p>The right to obtain a patent shall lie with:</p>	
<p>the author (authors) of a selection achievement;</p>	<p>are essentially inherited from the characteristics of a protected variety (the original variety), or breed (the original breed), if such protected varieties or breeds are not in turn selection achievements which essentially inherit the characteristics of other selection achievements;</p>
<p>the employer, in the circumstances defined in Article 6 of this Law;</p>	
<p>their legal successor, including any person who acquired such a right by way of assignment.</p>	<p>are not clearly distinguished from a protected variety or breed;</p>
<p style="text-align: center;">Article 24 Rights of a patent holder</p>	
<p>A patent holder shall have the exclusive right to use a selection achievement.</p>	<p>require repeated use of a protected variety for seeds to be produced.</p>
<p>The exclusive right of a patent holder shall mean the right to perform the following actions with seeds or breeding material of a protected selection achievement:</p>	<p>A selection achievement which essentially inherits the characteristics of another (original) protected selection achievement shall be a selection achievement which, being clearly distinct from the original:</p>
<p>production and reproduction;</p>	<p>inherits the commonest essential characteristics of the original selection achievement or a selection achievement which itself inherits the essential characteristics of the original selection achievement and which retains the fundamental characteristics reflecting the genotype or combination of genotypes of the selection achievement;</p>
<p>bringing to sowing conditions for subsequent propagation;</p>	
<p>offering for sale;</p>	
<p>sale and other means of disposal;</p>	
<p>export from the territory of the Kyrgyz Republic;</p>	<p>corresponds to the genotype or combination of genotypes of the original selection achievement, except for deviations caused by the use of methods such as individual selection from the original variety or breed, a selection of an induced mutant or genetic engineering.</p>
<p>import into the territory of the Kyrgyz Republic;</p>	
<p>storage for the above purposes.</p>	
<p>The right to a patent and the right to use a selection achievement arising from a patent may be transferred by an agreement to assign the patent or a license agreement to any natural or legal person.</p>	<p>(KR Law of March 31, 2005, No. 58)</p> <p style="text-align: center;">Article 25 Acts not recognized as an infringement of the rights of a patent holder</p>
<p>The exclusive right of a patent holder shall also extend to plant materials placed on the market without the permission of the patent holder and in</p>	<p>The following are not recognized as infringing the right of a patent holder:</p>

acts performed for personal and non-commercial purposes;

acts performed for experimental purposes;

acts using the protected variety or breed as original material for creating a new selection achievement and, except for cases provided for in the fifth paragraph of Article 24 of this Law, the acts designated in the second paragraph of Article 24 of this Law, in connection with such selection achievements;

the use of plant material obtained from peasant (small farm) cultivation in the user's own enterprise for a period of two years as seeds for the cultivation of the variety on the territory of that enterprise.

The list of genera and species of plants for which the privilege described in the fifth subparagraph of the first paragraph of this Article applies shall be drawn up by the Government of the Kyrgyz Republic.

(KR Law of March 31, 2005, No. 58)

Article 26

Maintaining a selection achievement

A patent holder shall maintain a variety or breed for the term of validity of the patent in such a way as to preserve the characteristics given in the description of the variety or breed on the date of their entry in the National Register of Protected Selection Achievements.

The patent holder shall, at the request of Goskommissiya, send seeds for control testing and to ensure that conditions are suitable for on-site inspections and, at the request of Gospleminspektsiya, provide unhindered access to the breeding material for checking and approval on the spot.

Section VII

Protecting the rights of a patent holder

Article 27

Liability for infringing the rights of a patent holder

Liability shall be incurred under the law of the Kyrgyz Republic for infringing the rights of a patent holder as defined in this Law.

Claims against an infringer of a patent may also be made by a licensee, if the license agreement so provides.

A natural or legal person who fails to comply with the requirements of this Law in respect of the exclusive rights of a patent holder, or who imports into the Kyrgyz Republic seeds or breeding material or another selection achievement without the permission of the patent holder, shall infringe the patent, and the selection achievement shall be counterfeit.

Selection achievements imported into the Kyrgyz Republic from States in which they have never been protected or have ceased to be protected by law, but are protected under this Law, shall also be deemed to be counterfeit

(KR Law of March 31, 2005, No. 58)

Article 28

Protection of the rights of a patent holder

A patent holder shall be entitled to seek from an infringer:

- (a) acknowledgment of the rights of the patent holder;
- (b) restitution of the position which existed before the infringement of the right and cessation of the acts which infringe the rights or constitute a threat of infringement;
- (c) compensation for loss, including loss of profit;
- (d) repayment of any income received by the infringer as a consequence of the infringement of the rights of the patent holder, in lieu of compensation for loss;
- (e) the adoption of other measures for the protection of his or her rights, which are provided for in normative legal instruments.

The choice of the measures specified in subparagraphs (c) and (d) of this Article shall be at the discretion of the patent holder.

The patent holder shall be entitled to apply to the courts for the protection of his rights, and also to the competent investigating authorities.

Counterfeit seeds or breeding material shall be subject to compulsory confiscation if so ordered by a court. Confiscated counterfeit seeds and breeding material may be destroyed, except where they are transferred to a patent holder at his request.

Where sufficient data exist concerning an infringement of the rights of a patent holder, the investigating authority or the court shall take steps to locate and seize a selection achievement which is believed to be counterfeit.

Section VIII

Declaring a patent void, early termination of the validity of a patent, renewal of the validity of a patent
(Title of the section in KR Law No 58 of March 31, 2005)

Article 29 Pronouncing a patent void

From the date of publication of a notice concerning a patent, any person may make a reasoned application to the Appeals Board to have a patent declared void. The authorized State Agency for Intellectual Property shall send a copy of the appeal to the patent holder, who shall, within three months of its dispatch, present a reasoned reply. A fee shall be payable for considering an application to have a patent declared void.

The Appeals Board shall take a decision on the matter within six months, unless additional tests are required.

A patent shall be declared void:

if on the date when the patent was granted the selection achievement did not meet the conditions of novelty, distinctiveness, uniformity or stability;

if the person named on the patent as the holder did not have legal grounds for obtaining the patent.

(KR Law of March 31, 2005, No. 58)

Article 30

Early termination of the validity of a patent

The validity of a patent shall be terminated early: if within the prescribed time limit the patent holder has not paid the fee for maintaining the patent in force;

if the patent holder has not complied within the prescribed time limit with a request from Goskommissiya or Gospleminspektsiya to supply seeds, breeding material, documents or other information for ascertaining that a selection achievement should be protected, or has not fulfilled the conditions for an on-site inspection of a selection achievement;

if a selection achievement no longer meets the conditions of uniformity and stability.

The authorized State Agency for Intellectual Property shall publish a notice in the Official Gazette concerning the early termination of the validity of a patent.

(KR Law of March 31, 2005, No. 58)

Article 30-1

Renewal of the validity of a patent Right of subsequent use

The validity of a patent for a selection achievement which has been terminated because the patent fee for the maintenance of the patent in force has not been paid within the specified time limit, may be renewed at the request of the person to whom the patent belonged. Such a request shall be submitted to the authorized State Agency for Intellectual Property within three years for plant varieties, and for vine varieties, ornamental timbers, cultivated fruits and forestry products, including their subspecies, and for animal breeds, within five years of the expiry of the time limit for payment of the above-mentioned patent fee, but before the expiry of the time limit for the validity of the patent established in accordance with this Law. A document confirming payment of the patent fee for the renewal of validity of the patent shall be attached to the request.

The authorized State Agency for Intellectual Property shall publish a notice in its Official Gazette concerning the renewal of the validity of a patent.

Any person who, in the period between the date of termination of the validity of a patent and the date of publication in the Official Gazette of the authorized State Agency for Intellectual Property of a notice concerning the renewal of validity of the patent, has begun to use the patented selection achievement on the territory of the Kyrgyz Republic, or has made the necessary preparations within this period for doing so, shall retain the right to its future use free of charge without extending the scope of such use (the right of subsequent use).

The right of subsequent use may only be transferred to another natural or legal person in connection with a production process in which the selection achievement was used or in which the necessary preparations for doing so were made.

The rights enumerated in the third and fourth paragraphs of this Article do not include the right to issue a licence to any person for the performance of the action concerned.

(KR Law of March 31, 2005, No. 58)

Article 31

Appealing the decisions of the Appeals Board of the authorized State Agency for Intellectual Property

A decision of the Appeals Board to grant or refuse the grant of a patent, or to declare a patent void, may be appealed in the courts within six months of being received by the applicant.

(KR Law of March 31, 2005, No. 58)

Section IX Licenses

Article 32 The licensing agreement

Under a licensing agreement (whether an exclusive or a non-exclusive licence) a patent holder (the licensor) shall transfer the right to the use of a

selection achievement to another person (the licensee) by means of a conditional agreement conferring a range of transferred rights, time limits, territories and arrangements for payment.

In case of the transfer of a non-exclusive license, the licensee is given the right to use the selection achievement for a specified period of time and within the limits of the transferred rights provided for in the licensing agreement. The grant of a non-exclusive licence shall not prevent the licensor from offering licenses to third parties or using the selection achievement himself. The license shall not be transferred by the licensee to third parties. The licensee shall not have the right to grant sub-licenses.

Where an exclusive licence is transferred, the licensee shall be given the exclusive right to use the selection achievement on agreed terms and territories and for an agreed period of time. When granting an exclusive license, the licensor may not use the selection achievement, or grant licenses to third parties on the territory concerned. The licensee shall be entitled, subject to conditions agreed with the licensor, to grant sub-licenses to third parties. Terms in the license agreement which impose on the licensee restrictions not arising from the rights granted to him by the patent, or which are not necessary to maintain the patent, shall be invalid.

A licensing agreement and an agreement to assign a patent shall be subject to registration with the authorized State body for intellectual property, failing which they shall be deemed to be invalid. Notices of the registration shall be published in the Official Gazette. An appropriate fee shall be payable for the registration of a licensing agreement and of an agreement to assign a patent.

See: Rules for the consideration and registration of an agreement to assign a document providing protection for industrial property subject matter, a selection achievement, a licensing agreement conferring rights to their use, or an agreement on the transfer of technology (approved by decision No. 3 of the Board of the KR Kyrgyzpatent, March 26, 1999, No. 3)

(KR Law of March 31, 2005, No. 58)

Article 33 Open licenses

A patent holder may publish a declaration in the Official Gazette of the authorized State Agency for Intellectual Property stating that any person shall be entitled to use his selection achievement, from the date of notification to that effect by the patent holder, subject to making the payment stipulated in the declaration.

The amount of the fee for maintaining a patent in force shall be reduced by 50 per cent from January 1, of the year following the year in which the declaration on the grant of an open license is published.

The authorized State Agency for Intellectual Property shall make an entry in the National Register of Protected Selection Achievements to record the grant of an open license and the amount of the payments.

On a declaration being made by the patent holder, and with the consent of all the holders of an open license, the authorized State Agency for Intellectual Property enters in the National Register of Protected Selection Achievements a record of the termination of validity of an open license.

An appropriate fee shall be payable for filing an application to terminate the validity of an open license and publish in the Official Gazette notices of termination.

Article 34 Compulsory licensing

If within three years of the date on which a patent was granted the patent holder, or a person to whom rights in the patent have been transferred, does not make use of a selection achievement which is of crucial importance for agriculture in the country, does not supply the market with seeds to the necessary extent and refuses to enter into agreements with an interested party, the latter shall be entitled to apply to the court to grant him a compulsory licence for the use of the selection achievement concerned.

In exceptional circumstances (natural disasters, catastrophes etc.), the Government of the Kyrgyz Republic shall be entitled to give permission for the use of a selection achievement without the permission of the patent holder, notifying him as soon as possible and paying the patent holder commensurate compensation, the extent and duration of use of the patented selection achievement being limited to the purposes for which the permission was given. Disputes arising from such use shall be resolved by the courts.

If a patent holder does not prove that there are proper grounds for the failure to use a selection achievement, in granting the licence the court shall define the limits of use, and the amount of the payment to be made and the procedure for making it. The payment shall be set no lower than the cost of the license, which is determined in accordance with established practice.

When granted a compulsory licence, the licensee shall be given the right to use the selection achievement within the scope of the rights of a non-exclusive licence.

The court may order the patent holder to provide the licensee with the reproduced material necessary to make effective use of the compulsory licence, in exchange for a corresponding payment to the patent holder on acceptable terms.

A compulsory licence shall be provided where the following conditions exist:

the applicant for a compulsory licence shall be in a financial, technical and scientific position to make effective use of the rights of a patent holder:

the patent holder has refused to permit the applicant for a compulsory licence to produce or trade in the reproduced material of the protected selection achievement by means adequate for the needs of society, or is not willing to give such permission on acceptable terms;

there are no grounds for the patent holder to refuse to permit use of a selection achievement by the requested method.

The duration of the compulsory licence shall be determined by the court.

A notice of the compulsory licence shall be published in the Official Gazette and recorded in the National Register of Protected Selection Achievements.

An appropriate fee shall be payable by the licensee for the registration and the publication in the Official Gazette of a notice of the grant of a compulsory licence.

(KR Law of March 31, 2005, No. 58)

Section X International cooperation

Article 35

The right to file an application in other States

An applicant may file an application for the protection of a selection achievement with the competent authorities of another State, having notified the authorized State Agency for Intellectual Property accordingly.

Expenditure connected with the protection of rights in selection achievements outside the Kyrgyz Republic shall be borne by the applicant.

(KR Law of March 31, 2005, No. 58)

Article 36

Rights of foreign citizens and legal persons

Foreign citizens and legal persons may make use of the rights specified in this Law on an equal footing with citizens and legal persons of the Kyrgyz Republic, in accordance with the international treaties to which the Kyrgyz Republic is a party or on the basis of the principle of reciprocity.

Article 37

Effect of international treaties

If international treaties to which the Kyrgyz Republic is a party establish rules other than those contained in this Law, the rules of the international treaty shall prevail.

Section XI Final provisions

Article 38

Monitoring imports and exports of selection achievements

The import and export of selection achievements recorded in the National Register of Protected Selection Achievements shall be monitored by the customs authorities, in accordance with the customs law of the Kyrgyz Republic.

(KR Law of March 31, 2005, No. 58)

Article 39

The legal rules for certificates and certificates of authorship for selection achievements registered by the USSR State Committee for Inventions and Innovations

The effect of certificates and certificates of authorship for selection achievements registered with the USSR State Committee for Inventions and Discoveries shall be recognized on the territory of the Kyrgyz Republic. Holders of certificates and authorship certificates for plant varieties where the 20-year time limit has not elapsed, and for vine varieties, ornamental timbers and forestry products, and animal breeds with a 25-year period of protection from the date of filing of the application, shall have the right to request them to be exchanged for patents of the Kyrgyz Republic. The request shall be made to the authorized State Agency for Intellectual Property. The procedure for submitting and considering the requests is laid down in the Rules.

Where applications were filed for the grant of authorship certificates for new varieties or breeds before the entry into force of this Law and where tests have been carried out on them by Goskommissiya or Gospleminkspektsiya and decisions made to permit their use, the applicant shall be given the right to request the grant of a patent of the Kyrgyz Republic for a selection achievement on condition that the selection achievement meets the requirements for protection under this Law.

Applications on which the requests specified in the third paragraph of this Article were filed within the set time limit shall be considered in the manner prescribed in this Law and in the Rules, without subjecting the selection achievement to the requirements of novelty under Article 4 of this Law. Patents of the Kyrgyz Republic for a selection achievement which were granted on requests to exchange certificates or authorship certificates shall take effect from the date of the entry of the selection achievement applied for in the National Register of Protected Selection Achievements and until the expiry of a 20-year time limit for plant varieties, or 25 years' protection from the date of filing the application for vine varieties, ornamental timbers and forestry products, and animal breeds.

(KR Law of March 31, 2005, No. 58)

Article 40.
Transitional provisions

Patents of the Kyrgyz Republic for selection achievements which were granted before the entry into force of this Law shall retain the time limits for validity specified in them.

Where applications for the grant of a patent for a selection achievement were being processed before the entry into force of this Law and positive decisions have been made on them, patents of the Kyrgyz Republic shall be granted for the selection achievement with the following periods of validity: for plant varieties, 30 years from the date of entry of the selection achievement applied for in the National Register of Protected Selection Achievements; and 35 years for vine varieties, woods and ornamental timbers, cultivated fruits and forestry products, including their sub-species, and animal breeds.

Applications for the grant of a patent for selection achievements which were being processed before the entry into force of this Law and on which no decision has been made shall be further considered in accordance with this Law.

(KR Law of March 31, 2005, No. 58)

Article 41.

On the entry into force of this Law

1. This Law shall take effect from the date of its publication.

Published in the newspaper "Erkin-Too" on June 26, 1998, Nos. 81-82

2. The Government of the Kyrgyz Republic shall, within three months from the date of entry into force of this Law:

- approve the List of botanical and zoological species and of plant and animal varieties which are to be protected under this Law.

See: Decision of the Government of the KR of August 28, 1998, No. 572 on the Approval of Lists of Botanical and Zoological Genera and Species of Plants and Animals

- bring its normative legal instruments into conformity with this Law.

The President of the Kyrgyz Republic, A. Akayev